

9.02.00.00 - CONDEMNATION SUITS

9.02.01.00 Request for Suit Papers

Immediately after passage of the Resolution by the CTC, the District requests the appropriate Regional Legal Office to prepare the papers necessary for filing suit.

One Resolution covering each ownership is mandatory, and a separate condemnation suit on each ownership is the normal practice. However, a multi-ownership condemnation suit is permissible when the District and the Regional Legal Office agree such action is desirable.

INFORMATION REQUIRED FOR SUIT PREPARATION	
Type	Description
Parcel Resume	Brief parcel description.
Staff Appraisal	Appraisal report prepared by District Appraisal staff.
Title Reports	Furnish current title reports or supplemental reports bringing title up to date. Make explanatory notations as to specific exceptions in the left-hand margin of the reports where title is to be taken subject to exceptions or the exceptions do not affect the parcel sought to be condemned.
Expenditure Authorization	Include the EA number below the file reference so the Regional Legal Office can apportion charges.
Maps & Exhibits	Include a map or diagram portraying as far as practical the property described in the complaint, showing its location in relation to the project for which it is to be acquired [CCP Section 2350.310(e)]. The condemnation parcel number will be the same as the acquisition parcel number. See R/W Engineering Chapter for requirements.
Names	Include full names of owners and tenants owning realty. Also include full names of any persons, including spouses, actually in possession of the property or claiming an interest therein that do not appear in the title report so they can be properly named as defendants.
Number of Copies	Indicate the estimated number of copies of the Summons and Complaint required for service.
Taxing Agencies	Name counties only if they have interests other than <i>ad valorem</i> property taxes. Review CCP Section 1250.250 for specific requirements. (See also Section 9.02.08.00 and 9.15.04.00.)
Order for Possession	When requesting an OP, include the appraiser's name and qualifications to allow preparation of the Summary of the Basis for the Appraisal. Segregate the summary as to value of the property to be acquired, severance damages, special benefits, and goodwill, if applicable.
Other Information	Include any other advice or information on the various exceptions that may assist the Regional Legal Office in the preparation of suit papers.

9.02.02.00 **Information Required for Suit Preparation**

The District reviews the parcel descriptions prior to requesting suit papers to assure they are identical to those attached to the Resolution and prepares the necessary maps and exhibits. The information in the table on the preceding page is forwarded to the Regional Legal Office with the suit request, along with the declarations and staff appraisal.

9.02.03.00 **Suits Involving Public Utilities**

Suits involving public utilities usually are not necessary, especially if the utility owns easement title. Arrangements normally can be made by using a Joint Use Agreement or Consent to Common Use Agreement that will satisfy all parties.

When fee-owned public utility land is necessary for a transportation project, a controversy may arise regarding valuation of the property or the type of interest the State is to acquire. If either is probable, the District should consult with the Regional Legal Office and RW HQ Acquisition Branch immediately.

If no agreement is reached and eminent domain appears likely, the District mails the Notice of Intent specifying the type of title to be condemned, i.e., fee reserving an easement to the utility or an easement out of the utility company's fee.

The District should not presume that Rights of Entry with or without the waiver clause will always be available from the utility company.

9.02.04.00 **Suits Involving Railroads**

Suits involving nonoperating property owned by railroad companies are handled like any other property.

If the required property is used for operating railroad purposes, consult RW HQ before initiating condemnation procedures. Every effort should be made to avoid condemnation of railroad operating property by obtaining rights of entry and construction agreements. (See the Railroad Section of the Acquisition Chapter.)

When a project involves crossing the railroad right of way at grade or by a grade separation structure, the California Public Utilities Commission (PUC) must approve the construction. Approval of the PUC is subject to an agreement between the State and the railroad. The Division of Structures handles Service Agreements for grade crossings and Construction and Maintenance Agreements for grade separations. Although a suit can be filed, the Superior Court has no right to grant an OP until PUC approval has been obtained.

If the railroad disagrees with the State's plans for the project, the PUC will hold a hearing. The PUC hearing process can take six months or more to complete.

9.02.05.00 **Filing Suit Papers**

The Regional Legal Office prepares the following and forwards to the District:

- **Summons and Complaint** - originals and sufficient copies of each to make the necessary services on the defendants.
- **Lis Pendens** - original and copies.
- **Application and Declaration for Order for Possession** - if requested.
- **Order for Possession** - if requested
- **Notice of Deposit and Summary of the Basis for the Appraisal** - if requested, original and sufficient conformed copies so service by R/W or Legal can be made.

Pursuant to Government Code Section 6103, the Department does not pay filing fees.

9.02.06.00 **Recordation and Service of Lis Pendens**

Immediately after filing of the suit, the District must have the Lis Pendens recorded with the county recorder of each county in which the property affected by the suit is located. Service of the Lis Pendens is concurrent with service of the Summons and Complaint. (See CCP Section 1250.150.)

9.02.07.00 Filing Complaint and Issuance of Summons

The District shall arrange for filing of the original Complaint and for issuance of original Summons by the clerk of the court within six months of adoption of the Resolution. In most cases the county clerk acts in the capacity of the clerk of the court. (See CCP Section 1245.260.) The District retains the original Summons until such time as proof of service or return to the court is necessary.

See Section 9.03.04.00 for return of original Summons to the court.

9.02.08.00 Request for Segregation of Taxes on Partial Takings

For partial takings of locally-assessed properties, the District processes a request for segregation or pro-rating of taxes immediately after the taxes are subject to cancellation. This occurs on the effective date of possession as set forth in the OP or, in the absence of an OP, upon the recordation of the document (Deed or Final Order of Condemnation) conveying the property to the State.

9.02.09.00 Conforming Copies of Summons, Complaint, and Lis Pendens

Before they are served on the defendants, each copy of the Summons, Complaint, and Lis Pendens must be conformed to agree with the originals. Maps must be inserted in the copies of the Complaint in the same manner and form as contained in the original. See Section 9.03.03.00 if an OP is also being served.

9.02.10.00 Coordination With Regional Legal Office

The Regional Legal Office forwards copies of each pleading filed with the court or received by them to the District so that a complete file is maintained, or as agreed to by the District and the Regional Legal Office. The Regional Legal Office and the District should coordinate activities and maintain communications necessary to meet timetables required by the CCP or the courts. The District should advise the Regional Legal Office of the status of action and any settlements made through Right of Way Contract.

9.02.11.00 Status of Title When Suit Is Filed

When the necessary suit filing procedures have been completed, the District orders a title report or supplemental letter from the title company to show the condition of title as of the recordation date of the Lis Pendens. This permits a current review of the status of title to assure that all parties having an interest in the property are served. It is essential that status of title is current in the event of a withdrawal of deposit application. See Section 9.09.00.00.

9.02.12.00 Suits With Orders for Possession

See Sections 9.03.00.00 and 9.08.00.00 for procedures to follow after the filing of the Complaint.

9.02.13.00 Rearrangement of Improvements Involved in Condemnation Action—Stipulations

After a condemnation action has been filed, expenditures shall not be made for rearrangement of buildings, fences, or roadways; restoration of water supply; changes in irrigation pipelines; construction of ditches; etc.; for the purpose of mitigating damage except under specific agreement (stipulation). The stipulation shall be executed by all parties who would have to execute an agreement for the sale of the property. The Regional Legal Office drafts the stipulation based on information provided by the District.

The terms of any partial settlement of a transaction shall be included in a stipulation to be filed in the proceeding. The stipulation shall provide that in the event of trial, the defendant will not claim damages for any of the items covered by the stipulation.

9.02.14.00 Memorandum of Case Status

Within 45 days after filing of the suit, the District completes a Condemnation Status Report in the form required by the Regional Legal Office. It must be completed without delay and returned to the attorney assigned to the case.

9.02.15.00 Fast Track Procedures

9.02.15.01 General

The Trial Court Delay Reduction Act of 1986 (Fast Track) is intended to expedite the processing of condemnation cases through the court system. The Act is contained in the Government Code, commencing with Section 68600, and is implemented by Title 4 (Rule 1901-1914) of the Rules of Court. It requires that each county adopt rules to implement the Act. Each District should obtain the rules for its respective counties.

The program ensures that general civil matters filed in the Court are expeditiously pursued from filing to trial. To accomplish this early resolution of cases, the Court will monitor and, where necessary, direct the progress of proceedings.

9.02.15.02 Procedure

The Regional Legal Office has overall responsibility for compliance with the Act. Since procedures and forms vary from county to county, the District should check with the Regional Legal Office on procedures to be followed.

At the time the Complaint is filed, the case is set for a Case Management Conference within 120 days and may be assigned to a judge. At the time of the conference, the Court will review the status of proceedings and make orders necessary to ensure that the matter is ready for trial at the earliest possible date. Where appropriate, the Court will set the matter for further conferences.

Legal must file an At-Issue Memorandum in order to secure a trial date. The Court Executive Officer will set the trial within 90 days of the Case Management Conference, unless specifically ordered otherwise by the Court.

The Judicial Council of California has adopted two forms that are important in the implementation of the Act. They are Notice of First Case Management Conference, Form DR-100, and Case Management Conference Questionnaire, Form DR-110.

All the following documents must be served within 60 days and proof of service returned to the court as soon as practicable.

- **Summons** - one endorsed copy.
- **Complaint** - one endorsed copy.
- **Lis Pendens** - one certified copy and one endorsed copy. The original is forwarded to Legal after recording is completed.

The Department is responsible for serving a copy of Notice of First Case Management Conference on each defendant and providing the Court with proof that such service was accomplished.

The following is suggested language to use as a Notice:

In accordance with the California Rules of Court 1901 through 1914 and the Trial Court Delay Reduction Rules of _____ County.

The matter is set for a Case Management Conference on _____. Pursuant to Rule 1905, this case is assigned to The Honorable _____.